

**ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010**  
**COMMITTEE STATEMENT**  
**LB1079**

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**Hearing Date:** Friday February 05, 2010  
**Committee On:** Revenue  
**Introducer:** Cornett  
**One Liner:** Change the time for appealing to the Tax Equalization and Review Commission and certain dates relating to property tax assessment and equalization

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 7 Senators Cornett, Dierks, Hadley, Louden, Pirsch, Utter, White  
**Nay:**  
**Absent:**  
**Present Not Voting:** 1 Senator Adams

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<b>Proponents:</b> Senator Abbie Cornett William J. Mueller	<b>Representing:</b> Introducer Nebraska Association of Commercial Property Owners
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<b>Opponents:</b>	<b>Representing:</b>
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<b>Neutral:</b> Bob Wickersham Mike Goodwillie Jon Edwards	<b>Representing:</b> Tax Equalization & Review Commission Douglas County Assessor Nebraska Association of County Officials
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**Summary of purpose and/or changes:**

LB 1079 would increase from 30 days to 120 days the time within which a property taxpayer could appeal a county board of equalization's (CBOE) final decision on the taxpayer's protest to the Tax Equalization and Review Commission (TERC). Additionally, it would change June 1 to May 20 (and May 20 to May 10) as the date by which various actions must be taken by a county assessor and/or CBOE.

Section 1: Would change June 1 to May 20 in Neb. Rev. Stat. sec. 77-202.02, which currently requires a CBOE to give notice between February 1 and June 1 of its decision to grant or withhold tax exemption for real property or tangible personal property on the basis of law and regulations of the Nebraska Department of Revenue.

Section 2: Would change June 1 to May 20 in Neb. Rev. Stat. sec. 77-1315(1), which currently requires a county assessor to implement adjustments to the real property assessment roll for actions taken by TERC after March 19 and on or before June 1. It would also change June 1 to May 20 in Neb. Rev. Stat. sec. 77-1315(2), which currently requires a county assessor to, on or before June 1 (May 20 under LB 1079), notify the owner of record as of May 20 (as of May 10 under LB 1079) of every item of real property that has been assessed at a value different than in the previous year.

Section 3: Would change June 1 to May 20 in Neb. Rev. Stat. sec. 77-1375(4), which currently requires a county assessor to give notice to the parties of his or her findings by certified mail on or before June 1. Additionally, it would change June 1 to May 20 in Neb. Rev. Stat. sec. 77-1375(5), which allows apportioning the total value of real property

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between the owner of improvements on the real property and the owner of the land and which currently provides that such proportions will continue from year to year unless changed by the county assessor after notice given on or before June 1.

Section 4: Would change June 1 to May 20 in Neb. Rev. Stat. sec. 77-1502, which currently requires a CBOE to meet for the purpose of reviewing and deciding written protests filed pursuant to Neb. Rev. Stat. sec. 77-1502 beginning on or after June 1 and ending on or before July 25 (if the CBOE is in a county with more than 100,000 inhabitants the CBOE can adopt a resolution extending the July 25 deadline to August 10).

Section 5: Would change June 1 to May 20 in Neb. Rev. Stat. sec. 77-1504, which currently requires a CBOE to meet on or after June 1 to consider and correct the current year's assessment of any real property that has been undervalued or overvalued.

Section 6: Would change June 1 to May 20 in Neb. Rev. Stat. sec. 77-1507(1), which currently prohibits a CBOE from sending notice of omitted real property on or before June 1. Additionally, it would change 30 days to 120 days in Neb. Rev. Stat. sec. 77-1507(3), which currently allows action of a CBOE upon a protest to be appealed to TERC within 30 days after the CBOE's final decision.

Section 7: Would change Neb. Rev. Stat. sec. 77-1510 to provide that any action of a CBOE under Neb. Rev. Stat. sec. 77-1502 may be appealed within 120 days to TERC in accordance with Neb. Rev. Stat. sec. 77-1503. Neb. Rev. Stat. sec. 77-1510 currently provides that such action may be appealed to TERC on or before August 24 or on or before September 10 (if the county has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. sec. 77-1502).

Section 8: Would change May 15 to May 1 in Neb. Rev. Stat. sec. 77-1528, which currently requires TERC to send its statewide equalization orders on or before May 15 by certified mail to county assessors and by regular mail to the county clerk and county board or the date determined by the Property Tax Administrator (PTA) if an extension is ordered pursuant to Neb. Rev. Stat. sec. 77-1514.

Section 9: Would change June 1 to May 20 in Neb. Rev. Stat. sec. 77-1529, which currently requires the PTA, on or before August 1, to certify to TERC whether any order issued pursuant to Neb. Rev. Stat. sections 77-5023 to 77-5028 was or was not implemented by the county assessor as of June 1 pursuant to Neb. Rev. Stat. sec. 77-1315.

Section 10: Would provide an operative date of January 1, 2011.

Section 11: Would reenact the statutes amended by the bill.

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**Explanation of amendments:**

Revenue Committee AM 2164 to LB 1079 would strike the original provisions of LB 1079 and insert new sections. The committee amendment proposes a number of changes to current Nebraska law governing county boards of equalization (CBOE) and the Tax Equalization and Review Commission (TERC).

1. Give real property tax protesters a right to meet in person with the CBOE or a referee.

For real property tax valuation protests before a CBOE, section 1 of the amendment adds a new subsection to section 77-1502 that would require each protestor to have an opportunity to "meet in person" with the CBOE or a referee appointed under section 77-1502.01 to "provide information relevant to the protested parcel value." (Section 77-1502 requires a CBOE to meet to review and decide written protests beginning on or after June 1 and ending on or before

July 25 each year; however, in counties with population greater than 100,000 inhabitants, the CBOE can adopt a resolution extending the July 25 deadline to August 10.)

2. Extend the time within which a taxpayer can file an appeal with TERC.

Section 2 of the amendment amends section 77-1510 so that any action of a CBOE under section 77-1502 can be appealed to TERC in accordance with section 77-5013 (which governs TERC's jurisdiction, time for filing appeals, and filing fees) on or before October 1. Under current law, section 77-5010 provides that any action of a CBOE under section 77-1502 can be appealed to TERC in accordance with section 77-5013 on or before August 24 or on or before September 10 if the CBOE has adopted a resolution extending the July 25 deadline for hearing protests to August 10.

3. Permit a CBOE to change the value of a parcel of real property until October 1.

Section 3(1) of the amendment permits - but does not require - a CBOE to change the value of a parcel of real property after hearing and deciding a protest concerning the taxable value of that parcel pursuant to section 77-1502 without further hearing and with the agreement of the property owner and the county assessor until October 1 or until an appeal of its decision is filed with TERC, whichever occurs first.

Section 3(2) of the amendment provides that if a CBOE changes the taxable value of a parcel of real property under section 3(1) of the amendment after August 20 and before October 1, "any such change shall not require an adjustment in or have any effect on the current year's certified taxable value under section 13-509 or allowable growth under section 13-518 or be taken into consideration for purposes of the current year's levy under section 77-1601. Such change shall instead be taken into consideration the following year." Additionally, section 3(2) of the amendment requires the CBOE to "order the county assessor, county clerk, and county treasurer to revise the assessment books, unit valuation ledgers, and any other tax records accordingly and send a corrected tax statement to the property owner."

4. Permit Single Commissioner TERC Hearings.

Section 7 of the amendment permits - but does not require - TERC to conduct single commissioner hearings to help manage its caseload. TERC's chairperson would be empowered to designate an appeal for a single commissioner hearing upon the request of a party to the appeal or in such other manner as may be provided by TERC's rules and regulations.

The provisions of section 7 are a comprehensive set of rules for conducting single commissioner TERC hearings, which would be limited to protests involving a parcel of real property with a taxable value of \$1 million or less as determined by the CBOE. Such a hearing would be informal; the usual common-law and statutory rules of evidence would not apply; and the single commissioner conducting the hearing would be required to consider and use all matter presented at the hearing in making his or her determination.

However, any party to a single commissioner hearing can - before the hearing - elect in writing to have the appeal heard by a panel of TERC commissioners and the TERC commissioner conducting the hearing could, at any time, designate the appeal for a hearing by a panel of TERC commissioners.

Documents necessary to establish jurisdiction would constitute the record of the proceeding by a single commissioner, but no recording of the hearing before a single commissioner would be made. Any party to such a hearing could appear through an authorized representative who would not have to be a licensed attorney-at-law because the hearing would not constitute the practice of law.

A request for a rehearing before the full commission of a determination made by a single commissioner must be made as provided in section 77-5005. Section 6 of the amendment would amend section 77-5005 to coordinate the provisions of that statute with the provisions of the amendment authorizing single commissioner hearings. One such provision requires the full TERC commission, on an application made within 30 days after the date of an order to grant a rehearing and determine de novo any decisions of or orders made by a panel of TERC commissioners or by a single TERC

commissioner, except an order dismissing an appeal or petition for failure of the appellant or petitioner to appear at a hearing on the merits. Additionally, section 8 of the amendment exempts single commissioner hearings from the requirements of section 77-5016(1) through (12), which govern the conduct of TERC hearings, including, among other things, rules of evidence, cross-examination of witnesses, and standard of review.

5. Change the standard of review in cases heard by TERC.

Section 8 of the amendment rewrites section 77-5016(8) to:

(1) Allow TERC to dismiss an appeal or cross appeal if there is no evidence showing that the CBOE's order, decision, determination, or action appealed from is "erroneous."

(2) Require TERC to affirm the CBOE's order, decision, determination, or action, unless evidence before TERC shows that the CBOE's order, decision, determination, or action "was unreasonable, arbitrary, or unlawful."

(3) A CBOE's order, decision, determination, or action "determining taxable value is unreasonable or arbitrary if a different taxable value is proven by the greater weight of the evidence."

However, the provisions of section 77-5016(8) would not apply to an appeal or cross appeal arising under section 77-202.04 (i.e., a CBOE's decision granting or denying an application for exemption from taxation for real or tangible personal property) or section 77-1606 (i.e., a CBOE's action setting the property tax levy rate).

6. Other provisions in the amendment.

Section 4 of the amendment amends section 77-5001 to provide that section 7 of the amendment, which authorizes single commissioner TERC hearings, will be included as part of the Tax Equalization and Review Commission Act.

Section 5 of the amendment eliminates obsolete language in section 77-5004(4). Section 77-5004 governs, among other things, qualifications to be a TERC commissioner and conflicts of interest involving TERC commissioners.

Section 9 of the amendment requires the Revisor of Statutes to assign section 3 of the amendment to Chapter 77, article 15, of Nebraska's statutes.

Section 10 of the amendment provides an operative date of January 1, 2011, for LB 1079.

Section 11 of the amendment reenacts statute sections amended by LB 1079.

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Abbie Cornett, Chairperson